



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

DECISION

[REDACTED]
[REDACTED]
[REDACTED]

KIN/172514

PRELIMINARY RECITALS

Pursuant to a petition filed March 08, 2016, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Professional Services Group (PSG) in regard to Kinship Care, a hearing was held on April 07, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether PSG correctly ended the Petitioner's kinship care benefits for [REDACTED].

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED], Lead Kinship Assessor, Kinship Care Worker
Professional Services Group
1126 South 70th Street, Suite N200
West Allis, WI 53214

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is the maternal grandmother of ■■■, who is age 17. (Exhibit 2)
3. ■■■ was placed in Petitioner's care through a CHIPS petition when he was six years old. (Id.)
4. On February 23, 2015, PSG conducted an annual reassessment of Petitioner's eligibility for kinship benefits for ■■■. At that time, the assessor received a transcript for ■■■ showing that he had a grade point average of 0.1212. (Testimony of ■■■; Exhibit 2)
5. On February 26, 2016, PSG sent the Petitioner a notice, advising her that her kinship case for ■■■ was being closed, because he was not in good academic standing. The effective date of the closure was not stated in the notice. (Exhibit 2)
6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 8, 2016. (Exhibit 1)

DISCUSSION

The Kinship Care benefit is a public assistance payment of \$232 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLRR) Aid to Families with Dependent Children (AFDC) payment. To be eligible for the payments, the relative must meet all of the conditions set forth in Wis. Stat. §§ 48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6). Subsection (3m) concerns Children in Need of Protection or Services (CHIPS) and subsection (3n) concerns guardianship cases.

It is PSG's contention that ■■■ is not a child within the meaning of Wis. Stats. §48.57(3m) or of Wis. Stats. §48.57(3n), because he is not in good academic standing.

Wis. Stats. §48.57(3m)(a) states:

(a) In this subsection:

1. "Child" means a person under 18 years of age. "Child" also includes a person 18 years of age or over, if any of the following applies:
 - a. The person is under 19 years of age, is a full-time student in good academic standing at a secondary school or its vocational or technical equivalent, and is reasonably expected to complete his or her program of study and be granted a high school or high school equivalency diploma.
 - b. The person is under 21 years of age, [the person] is a full-time student in good academic standing at a secondary school or its vocational or technical equivalent, an individualized education program under s. [115.787](#) is in effect for the person, and the person is placed in the home

of the kinship care relative under an order under s. [48.355](#), [48.357](#), [48.365](#), [938.355](#), [938.357](#), or [938.365](#) that terminates under s. [48.355 \(4\) \(b\)](#) or [938.355 \(4\) \(am\)](#) after the person attains 18 years of age or under a voluntary transition-to-independent-living agreement under s. [48.366 \(3\)](#) or [938.366 \(3\)](#).

Wis. Stats. §48.57(3n)(a) contains an identical definition of child.

PSG has interpreted these statutes to mean that they can end kinship benefits for any child under age 19 who is not in good academic standing. This is not correct. There is nothing in these provisions that gives PSG the discretion to end benefits for a child under age 18 who is not doing well in school.

Wis. Stats. §48.57(3m) and Wis. Stats. §48.57(3n) create three categories of individuals who are considered children for purposes of receiving kinship care benefits:

- 1) Children who under age 18, period.
- 2) *Also*, children between age 18 and 19, who are enrolled in school full-time, in good academic standing and reasonably expected to graduate or receive a high school equivalency diploma; *and*
- 3) Children between age 18 and 21 who are enrolled in school full time, in good academic standing, receiving special education services and is placed in the home of the long-term kinship care relative under a dispositional order for special treatment that terminates when the child reaches age 18.

■ is age 17 and is therefore, under age 18. As such, he is eligible for kinship benefits as a child under Wis. Stats. §48.57(3m) and Wis. Stats. §48.57(3n), above.

If ■ is still in poor academic standing when he turns 18 in December 2016, then the Petitioner will lose eligibility for kinship care benefits at that time.

CONCLUSIONS OF LAW

PSG incorrectly ended the Petitioner's kinship benefits for ■.

THEREFORE, it is **ORDERED**

That PSG reinstate Petitioner's kinship benefits, effective February 2016. PSG shall take all administrative steps necessary to complete this task within ten days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision

as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

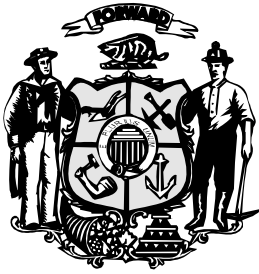
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of
Milwaukee, Wisconsin, this 11th day of
April, 2016

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 11, 2016.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care